

AMENDED IN SENATE JUNE 16, 2010

AMENDED IN SENATE FEBRUARY 24, 2010

AMENDED IN ASSEMBLY JANUARY 4, 2010

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 1502

Introduced by Assembly Member Eng

February 27, 2009

An act to *amend Section 17801 of the Business and Professions Code*, to amend Section 731 of the Code of Civil Procedure, to amend Section 11571 of the Health and Safety Code, and to amend Section 11226 of the Penal Code, relating to nuisance.

LEGISLATIVE COUNSEL'S DIGEST

AB 1502, as amended, Eng. Nuisance abatement: civil action.

Existing law authorizes the district attorney or city attorney to bring a civil action to abate a public nuisance, as defined.

Existing law provides that every building or place used for the purpose of specified unlawful transactions involving controlled substances is a nuisance, which may be abated in a civil action brought by the district attorney or city attorney.

Existing law provides that every building or place used for the purpose of illegal gambling, lewdness, assignation, prostitution, or counterfeiting is a nuisance, which may be abated in a civil action brought by the district attorney or city attorney.

This bill would authorize the county counsel to bring a civil action to abate a public nuisance, a controlled substances nuisance, or a gambling or prostitution nuisance, pursuant to each of the above provisions.

Existing law requires a district attorney, city attorney, or city prosecutor that brings an action to abate a nuisance for the use of a nonresidential building or place for the purpose of manufacturing, selling, or possessing for sale counterfeit goods to report to the Senate and Assembly Committees on Judiciary on the use and effectiveness of that abatement provision.

This bill would additionally require a county counsel that brings an action to abate a nuisance for the use of a nonresidential building or place for the purpose of manufacturing, selling, or possessing for sale counterfeit goods to report to the Senate and Assembly Committees on Judiciary on the use and effectiveness of that abatement provision. By requiring a county counsel to file this report, this bill would constitute a state-mandated local program

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

- 1 *SECTION 1. Section 17801 of the Business and Professions*
- 2 *Code is amended to read:*
- 3 17801. A district attorney, *county counsel*, city attorney, or
- 4 city prosecutor that maintains an action or actions to enjoin, abate,
- 5 or prevent a nuisance pursuant to the provisions of this chapter
- 6 shall report to the Senate and Assembly Committees on Judiciary,
- 7 by October 1, 2013, on their use of the provisions of this chapter
- 8 and their effectiveness. The report shall include, but not be limited
- 9 to, all of the following:
- 10 (a) The frequency of use of the nuisance abatement provisions
- 11 as well as statistics on whether the use of the abatement provisions
- 12 correlates with a decrease in the use of criminal penalties.

1 (b) Any statistics or information concerning the impact of the
2 use of these provisions on counterfeiting overall, both in the
3 relevant county or city and overall.

4 ~~SECTION 1.~~

5 *SEC. 2.* Section 731 of the Code of Civil Procedure is amended
6 to read:

7 731. An action may be brought by any person whose property
8 is injuriously affected, or whose personal enjoyment is lessened
9 by a nuisance, as defined in Section 3479 of the Civil Code, and
10 by the judgment in that action the nuisance may be enjoined or
11 abated as well as damages recovered therefor. A civil action may
12 be brought in the name of the people of the State of California to
13 abate a public nuisance, as defined in Section 3480 of the Civil
14 Code, by the district attorney or county counsel of any county in
15 which the nuisance exists, or by the city attorney of any town or
16 city in which the nuisance exists. Each of those officers shall have
17 concurrent right to bring an action for a public nuisance existing
18 within a town or city. The district attorney, county counsel, or city
19 attorney of any county or city in which the nuisance exists shall
20 bring an action whenever directed by the board of supervisors of
21 the county, or whenever directed by the legislative authority of
22 the town or city.

23 ~~SEC. 2.~~

24 *SEC. 3.* Section 11571 of the Health and Safety Code is
25 amended to read:

26 11571. If there is reason to believe that a nuisance, as described
27 in Section 11570, is kept, maintained, or exists in any county, the
28 district attorney or county counsel of the county, or the city attorney
29 of any incorporated city or of any city and county, in the name of
30 the people, may, or any citizen of the state resident in the county,
31 in his or her own name, may, maintain an action to abate and
32 prevent the nuisance and to perpetually enjoin the person
33 conducting or maintaining it, and the owner, lessee, or agent of
34 the building or place in or upon which the nuisance exists from
35 directly or indirectly maintaining or permitting the nuisance.

36 ~~SEC. 3.~~

37 *SEC. 4.* Section 11226 of the Penal Code is amended to read:

38 11226. If there is reason to believe that a nuisance, as defined
39 in this article or as set forth in Section 17800 of the Business and
40 Professions Code, is kept, maintained, or is in existence in any

1 county, the district attorney or county counsel, in the name of the
2 people of the State of California, or the city attorney of an
3 incorporated city or any city and county may, or any citizen of the
4 state resident within the county in his or her own name may,
5 maintain an action in equity to abate and prevent the nuisance and
6 to perpetually enjoin the person conducting or maintaining it, and
7 the owner, lessee, or agent of the building or place, in or upon
8 which the nuisance exists, from directly or indirectly maintaining
9 or permitting it.

10 The complaint in the action shall be verified unless filed by the
11 district attorney, county counsel, or the city attorney.

12 *SEC. 5. If the Commission on State Mandates determines that*
13 *this act contains costs mandated by the state, reimbursement to*
14 *local agencies and school districts for those costs shall be made*
15 *pursuant to Part 7 (commencing with Section 17500) of Division*
16 *4 of Title 2 of the Government Code.*